

# Marina Operator Contracts and Liability under Dutch Law



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# Marina Operator Contracts and Liability

1. What is it all about? The Netherlands;
2. Legal system in the Netherlands;
3. Assessing the legal relationship;
4. Liabilities;
5. Remedies.



# 1. What is it all about? The Netherlands



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## **Key figures watersports industry Netherlands**

- 2,000 companies main activity in marine (4,100 sum total)
- 30% market share super- and megayachts
- 30,000 employees (24,000 fte)
- € 2,55 billion revenue pleasure crafts, whereof € 1,1 billion export
- 1,100 marinas: 50% commercial
- 10,000 km of inland waterways (100% more than motorways)
- 500,000 boats
- 1,3 million active boaters

Source: <https://www.hiswa.nl/english>

## 2. Legal System in the Netherlands;

- **WJP Rule of Law Index 2017 -2018:**

- no. 1 Civil Justice
- no. 5 Overall

- <https://worldjusticeproject.org/>

- **Civil law**

- **Procedure:** Burden of proof – no disclosure

- **Contracts:**

- Reasonableness and fairness - No entire agreement clause - *Haviltex*



# 3. Assessing the Legal Relationship

- **Marina operator:**

- Provider of services/ shipbuilder/repair/lessor mooring place/custodian

- **Owner of yacht:**

- Principal/lessee



# 3. Assessing the Legal Relationship

- How to determine and qualify the contract?
- *Mixed agreements /Sui Generis*
- Custody vs Rental mooring place
- Why is it important? – Liabilities - Burden of Proof - Remedies

## 4. Liabilities

- **Marina operator:**

- Provider of services/ shipbuilder/repair/lessor mooring place/custodian
- HISWA General terms and conditions

## 4. Liabilities

- **Owner of yacht:**

- Principal/lessee

- Art. 8:544 CC: If a collision is caused by the fault of one vessel the owner of this vessel is liable to pay the damage caused.

- Fault of a vessel: Supreme Court 30 November 2001, *Casuele/De Toekomst*

# 5. Remedies

Right of retention

VS

Attachment



# 5. Remedies

- Right of retention =
  - Right to withhold performance under the contract



Obligation to return the vessel



Requires factual possession

# 5. Remedies

Something to think about.....

Contract

# 5. Remedies

Something to think about.....

Jurisdiction (attachment)

and

Limitation of Liability

# 5. Remedies

Something to think about.....





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